

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-206302

DATE: July 1, 1982

MATTER OF: Milwaukee County

DIGEST:

Although it is not clear that protest of Federal Aviation Administration (FAA) decision to locate air navigation facilities at a particular airport is appropriate for GAO bid protest review, protest in any event would be untimely since protester was aware during course of negotiations with FAA of facts forming basis of protest and did not file protest until several months thereafter.

Milwaukee County, Wisconsin protests the decision by the Federal Aviation Administration (FAA) to locate an automated flight service station facility (air navigation facility) at an airport in another county. For the reasons discussed below, we dismiss the protest.

The air navigation facility is part of a national program to modernize air traffic control facilities by placing updated equipment at numerous locations throughout the country. In implementing this program, FAA's initial policy was to acquire, at no cost, long-term leases of land at airports from local authorities and then to construct with Federal funds buildings to house the air navigation equipment.

The FAA initially determined that its preferred site in Wisconsin was Timmerman Airport in Milwaukee County. By letter of May 15, 1981, after several months of negotiations, the FAA notified Milwaukee County of its approval of a specific site at Timmerman Airport and requested that Milwaukee County provide a no-cost 50-year lease by June 30. A few days prior to the July 9 scheduled meeting of the Milwaukee County board, the FAA notified Milwaukee County that a change in policy was being considered.

Instead of leasing land and constructing buildings with Federal funds to house the air navigation facility, FAA decided, in the interest of economy, to lease the required space in existing or newly constructed airport buildings. At a meeting on July 14, the FAA explained its new policy to Milwaukee County officials and requested a proposal by August 14 for a 20-year lease of 10,000 square feet of space in an existing or new building. The county did not submit a proposal but, by letter dated September 1, informed FAA that it currently had neither space available nor funds to construct a new building. FAA then selected another airport to house its facility.

Milwaukee County asserts numerous grounds of protest. Specifically, it alleges that: 1) the FAA failed to adequately notify Milwaukee County of the details and specifications of the air navigation facility or to provide timely notice to the county of FAA's change in policy from construction to lease of space; 2) FAA failed to provide the county adequate time to develop a substitute proposal; 3) FAA violated "procurement regulations" which resulted in the County's not having an adequate opportunity to submit a proposal based on FAA's specific needs; and 4) FAA violated an agreement with Milwaukee County that the facility would be located at Timmerman Airport.

It is not clear whether FAA was conducting a procurement or was proceeding in some other manner, and thus it is not clear this is an appropriate matter for consideration under our Bid Protest Procedures, 4 C.F.R. Part 21 (1982). We need not decide that issue, however, for even if it were appropriate for us to consider the matter, the protest would be untimely. The record shows that all operative facts forming the basis of Milwaukee County's protest occurred and were known to the County prior to September 1 when it sent a letter to FAA stating that it had neither the space available nor funds to construct a new building in accordance with FAA's revised policy. By December 31, Milwaukee County was also aware of the selection of Green Bay, Wisconsin as the site for FAA's proposed facility. Yet, Milwaukee County did not

protest until February 4, 1982. Under our Bid Protest Procedures, Milwaukee County had 10 working days to protest from the date that the basis of protest was known or should have been known. 4 C.F.R. § 21.2(b)(2). Since Milwaukee County's protest was not filed here within 10 working days of September 1, 1981, the protest is untimely and would not in any circumstances be considered on the merits.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel